

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DUANE MORRISON (#08-A-2086),

Plaintiff,

v.

12-CV-00542
Decision and Order

RICK STROMAN, et al.,

Defendants.

On June 11, 2012, the pro se plaintiff, Duane Morrison, commenced this action under 42 U.S.C. § 1983. Docket Item 1. On September 5, 2013, United States District Judge Richard J. Arcara referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 7. On October 27, 2015, the defendants moved for summary judgment, Docket Item 56. On December 3, 2015, the plaintiff responded, Docket Item 62. And on August 4, 2016, Judge McCarthy issued a Report and Recommendation (“R&R”) finding that the defendants' motion should be granted. Docket Item 68.

On October 4, 2016, the plaintiff objected to the R&R on the grounds that Judge McCarthy erred in finding no material issue of fact. Docket Item 72. On October 21, 2016, the defendants responded to the objections. Docket Item 74.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge’s

recommendation to which objection is made. 28 U.S.C. § 636(b)(1);
Fed. R. Civ. P. 72(b)(3).

This Court has carefully reviewed the thorough R&R, the objection and response, and the pleadings and materials submitted by the parties. Based on that review, the Court accepts and adopts Judge McCarthy's recommendation to grant the defendants' motion. The plaintiff's objections merely restate factual disputes that are not material to his Eighth Amendment claims for the reasons stated by Judge McCarthy in the R&R. And so there is no reason to disturb Judge McCarthy's thoughtful and careful R&R.

For the reasons stated above and in the R&R, the defendants' motion for summary judgment, Docket Item 56, is GRANTED. The Clerk of the Court shall enter judgment for the defendants and close the file.

SO ORDERED.

Dated: August 29, 2018
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE